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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNIVERSITAS EDUCATION, LLC,

4 Judgment Creditor,

5 v.

11 CV 1590 (LTS)

6 NOVA GROUP, INC.,

7 Judgment Debtor.

8 -----x
9 New York, N.Y.
10 November 10, 2015
11 2:00 p.m.

12 Before:

13 HON. LAURA TAYLOR SWAIN,

14 District Judge

15 APPEARANCES

16 LOEB & LOEB
17 Attorneys for Universitas Education
18 BY: PAULA K. COLBATH
19 LEILY LASHKARI

20 HALLORAN & SAGE
21 Attorneys for SADI 2005 Trust and Grist Mill Trust
22 BY: DAN E. LABELLE

23 DRINKER, BIDDLE & REATH
24 Attorneys for Penn Mutual Life Insurance Co.
25 BY: ROBERT MANCUSO, II

ROBINSON & COLE
Attorneys for Curaleaf
BY: JOSEPH L. CLASEN

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(In open court)

THE COURT: We are here on Universitas' orders to show cause as to why certain restraining notices that were issued in 2014 ought not to be extended indefinitely. Before I go into the substance, counsel, would you please introduce yourselves and state your appearances.

MS. COLBATH: Good afternoon, your Honor. Paula Colbath from the firm of Loeb & Loeb LLP, representing Universitas. With me today is my colleague Leily Lashkari.

MS. LASHKARI: Good afternoon, your Honor.

THE COURT: Good afternoon, Ms. Colbath and
Ms. Lashkari.

MR. LaBELLE: Dan LaBelle, Halloran & Sage, representing the judgment debtor Grist Mill Trust, and also the interested parties Benistar 419 Plan and Trust, GMT Living Benefit Trust, Sickness Accident Disability Indemnities Trust, 2005, Nutmeg Trust, Life One Welfare Benefit Trust, and also Grist Mill Partners.

THE COURT: Good afternoon, Mr. LaBelle.

MR. MANCUSO: Good afternoon, your Honor.

Bob Mancuso from Drinker Biddle & Reath, on behalf of third-party garnishee, the Penn Mutual Life Insurance Company.

THE COURT: Good afternoon, Mr. Mancuso.

MR. CLASEN: Joe Clasen, from Robinson & Cole, representing Curaleaf.

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1 THE COURT: Good afternoon, Mr. Clasen. I have
2 reviewed the written submissions, and it appears that the
3 application is objected to in two respects:

4 One, by Penn Mutual and the interested parties
5 concerning the breadth of the restraint on Penn Mutual.

6 Then the interested parties have also raised the
7 question of the propriety of restraint of Curaleaf. I haven't
8 received any objections directed to the applications for
9 extension as to any other garnishees.

10 For the sake of efficiency, I would like to direct the
11 speakers' attention to specific issues and let you know where
12 I'm inclined to go on the basis of the papers regarding these
13 particular objections.

14 As to the restraint on Penn Mutual, it seems to me
15 that the point is well taken, that to put on the insurance
16 company the burden of divination as to connections with the
17 judgment debtors and their principals, while fulfilling its
18 obligations under contracts that may not name judgment debtors,
19 is an inappropriate burden in the context of a restraining
20 notice, which is a tool that is intended to be used with
21 respect to debts and property that can be identified to
22 judgment debtors.

23 So my inclination would be as to Penn Mutual to modify
24 the restraining language in the order, and you might wish to
25 turn to the Penn Mutual order.

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1 It is the please take notice paragraph on page 2. I
2 am looking at file document 543.

3 The please take notice paragraph, which is in effect
4 the restraint paragraph, currently says, "Hereby forbidden to
5 make, permit, or suffer any sale, assignment, or transfer of or
6 any interference with any such property or pay over or
7 otherwise dispose of any of such debt." The antecedents of
8 "such property" and "such debt" are the general references in
9 the whereas clause immediately preceding that language, and the
10 whereas clause says, "It appears that you owe a debt to one or
11 more of the judgment debtors or are in possession of property
12 in which one or more of the judgment debtors has an interest."
13 The "has an interest" language I think is at the root of the
14 indefiniteness problem.

15 So what I would propose to do -- and I will read this
16 slowly twice for conceptual purposes so that you can take notes
17 if you wish -- I would delete the language that begins, "Sale,
18 assignment or transfer" through the words "such debt" in the
19 please take notice paragraph.

20 MS. COLBATH: Could you repeat that one more time,
21 your Honor.

22 THE COURT: OK.

23 So right now it reads, "Permit or suffer any sale,
24 assignment or transfer."

25 MS. COLBATH: Correct.

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1 THE COURT: So from the word "sale," I would cross out
2 the rest of that line, cross out the entire following line, and
3 then cross out the words, "such debt," leaving "except as
4 provided in 5222."

5 Are you with me so far?

6 MS. COLBATH: Yes.

7 THE COURT: I would substitute for that language,
8 after the word "payment," and I will read this and then I will
9 read it again slowly, "Transfers of or disbursements from
10 policies titled to any judgment debtor, Benistar, or any other
11 entity that has been found by a Court to be an alter ego of any
12 judgment debtor, and disbursements from any policies to any
13 judgment debtor, Benistar, or any other entity that has been
14 found by a Court to be an alter ego of any judgment debtor,
15 including any such disbursements made to an intermediary or
16 agent for the stated benefit any of judgment debtor."

17 Let know me when you're ready for me to read that
18 again more slowly.

19 MS. COLBATH: I'm ready.

20 MR. MANCUSO: Likewise, your Honor.

21 THE COURT: Here we go. Apologies for not having it
22 written it out for you. The insert begins, "Transfers of or
23 disbursements from policies titled to any judgment debtor,
24 Benistar, or any other entity that has been found by a court to
25 be an alter ego of any judgment debtor, and disbursements from

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any policies to any judgment debtor, Benistar, or any other entity that has been found by a Court to be an alter ego of any judgment debtor, including any such disbursements made to an intermediary or agent for the stated benefit of any judgment debtor, Benistar, or any other entity that has been found by a Court," the same language regarding alter egos.

MR. LaBELLE: Your Honor, may I?

THE COURT: I am going to ask Mr. Mancuso when he's ready whether that language would address Penn Mutual's administrative concerns. Then I will hear everybody else.

Mr. LaBelle, did you have a question?

MR. LaBELLE: I was going to ask if I could confer briefly with my client representative in the courtroom.

THE COURT: Oh, sure.

MR. LaBELLE: If Mr. Mancuso is ready, I will stop. I will be ready when he's ready.

THE COURT: OK.

Mr. Mancuso.

MR. MANCUSO: May I, your Honor?

THE COURT: Yes.

MR. MANCUSO: I think overall this works well. The concern I have, your Honor, is one that I think we sort of continued to have over and over. It is just that I guess the specificity of the trust entities that own policies held by Penn Mutual.

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1 So, for example, the judgment debtor Grist Mill is the
2 Grist Mill Welfare Benefit Plan. I just want to make sure that
3 we're clear on which Grist Mill trusts would fall into that
4 category, if any.

5 I am not aware, your Honor, of any of the trusts or
6 policies in play here that relate to Benistar, although I would
7 want to go back with the company to confirm that. As far as
8 alter egos, the only alter ego entity that I am aware of that
9 has been adjudicated by a court to be an alter ego -- again,
10 that is related to what we have before us today -- is the Grist
11 Mill Trust. But there are various Grist Mill trusts.

12 I just want to make sure before we leave today that it
13 is crystal clear as to which entities fall into these
14 subcategories and which ones do not. I think so long as we
15 have that understanding, I appreciate what your Honor has done.

16 THE COURT: My intention is to capture the specific
17 entities that are named in the judgment as judgment debtors,
18 and to the extent that any other entity is denominated
19 specifically on the relevant documents as X and such trust as
20 sponsor or for the benefit of an entity that is specifically
21 listed in the judgment, because the judgment speaks of, in the
22 case of Grist Mill, Grist Mill and sponsors and entities, to
23 the extent they hold property, the Grist Mill Trust.

24 So it would be the Grist Mill Trust entity that's
25 listed specifically in the judgment. Is that the Grist Mill

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1 Welfare Benefit Plan Trust, Ms. Colbath.

2 MS. COLBATH: It is, your Honor. But the way that
3 it's operated, and we have a document that we will be
4 submitting to the Court today that I have submitted to counsel
5 before we got here, addresses that the Grist Mill Trust that is
6 the judgment debtor, the long name, was the umbrella for all of
7 these Grist Mill trusts. You don't have the document in front
8 you. It's Exhibit B to something that we would like to submit
9 today.

10 I appreciate Mr. Mancuso's point. What they did was
11 they have the Grist Mill Trust Welfare Benefit Plan, which is
12 what we have the judgment against, and that has subtrusts under
13 it.

14 Some of those are GMT -- I haven't memorized all of
15 the names, but the Grist Mill Trust, as the document sets
16 forth, was the umbrella for a number of Grist Mill trusts. So
17 we would ask that the -- I could recite for you the specific
18 names. It is GMT Living Benefit Trust. It should be included
19 as well. It is one of the interested parties.

20 THE COURT: And I understand that you are making the
21 general sort of policy and practical argument that these are
22 entities that move assets around and among themselves, and it's
23 hard to keep up with transfers. But, given the scope of the
24 restraining notice tool, if in fact these are set up as
25 separate entities, what is the legal basis within the

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1 restraining notice judgment execution context? Before you go
2 and get a veil-piercing determination or alter ego
3 determination or some court adjudication that they should all
4 factually be collapsed, what would be the basis of my extending
5 it?

6 MS. COLBATH: I am not asking you to collapse
7 different entities at this point, your Honor. The documents
8 that the Grist Mill Trust has produced to us, so that the
9 entity that I have a judgment against, the trust is comprised
10 of multiple trusts. That label was given to multiple trusts.

11 Might I suggest --

12 THE COURT: Yes.

13 MS. COLBATH: -- a proposal here, your Honor.

14 I do appreciate the position that Penn Mutual was in,
15 and I hope you recognize from the record that we submitted that
16 we did try to resolve some of this with the Grist Mill Trust
17 folks by preparing the declarations.

18 I feel that Universitas is somewhat prejudiced at this
19 point because we had filed an application to take
20 Mr. Carpenter's deposition to resolve all of all of this; also,
21 Ms. Carpenter's deposition, and she hasn't presented herself.
22 It will take another application because we have to do
23 everything by motion.

24 But we have had for quite a number of months an
25 application filed for Mr. Carpenter's deposition. So I would

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1 just ask that -- and he's pleaded the Fifth Amendment as to all
2 documents relating to the Grist Mill Trust and all of these
3 entities. So you are entitled to make an adverse inference
4 from that.

5 I would ask you to look at our supplemental
6 submission, where they describe exactly what the entity is that
7 we have -- it's not an entity, it is a label that they use, the
8 Grist Mill Trust, for these subtrusts -- before making your
9 determination.

10 I'm happy to leave here today so that Mr. Mancuso has
11 some definition to accept the language that you have proposed
12 with the addition that the GMT Living Benefit Trust be included
13 for at least some period of time until we make posthearing
14 submissions to you, until 30 days after Magistrate Judge Pitman
15 renders a decision on our application to take Mr. Carpenter's
16 deposition.

17 The day that this restraint is lifted those assets are
18 going, and we are not going to be able to get them back. I
19 have done everything in my power to clarify the issues that
20 Mr. Mancuso has raised. I totally appreciate that with
21 Mr. Carpenter as a judgment debtor, I am entitled to restrain
22 anything he has an interest in. He's taking the Fifth
23 Amendment, and people won't show up and they won't produce the
24 documents.

25 You are entitled to stay all of those trusts he has an

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1 interest in. My client shouldn't be prejudiced because
2 Mr. Carpenter has a corporate shell game, and so he wins the
3 corporate shell game when he pleads the Fifth and he refuses to
4 produce documents.

5 That's not the fair outcome. This restraint should
6 continue until his deposition is taken, until we have expedited
7 discovery as we have sought so that those assets don't
8 disappear forever.

9 THE COURT: Thank you.

10 Let me finish hearing from Mr. Mancuso.

11 MR. MANCUSO: Your Honor, if I may, I just wanted to
12 point out that I'm not sure if your Honor has it in front of
13 you or not, but in our opposition papers, which are at document
14 567 page 3 of 10, I have listed out there the various entities
15 that are identified within Penn Mutual as owners of policies.
16 So if you look --

17 THE COURT: This is the footnote?

18 MR. MANCUSO: Yes. The footnote, your Honor, contains
19 14 entities. There is also, in addition to that, the Grist
20 Mill Trust dated 10/1/03, which is further up in the bottom of
21 the text as well as the SADI Trust 2005.

22 So, just for purposes of clarity, which is, your
23 Honor, why I'm here today, it would be my understanding that,
24 based on what your Honor's coming from and what I heard from
25 Ms. Colbath, that the two entities that would remain restrained

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pursuant to your revised restraining notice would be the Grist Mill Trust dated 10/1/03, and I understand Ms. Colbath to be asking that GMT Living Benefits Trust dated 10/1/05, which is listed in footnote 1 at sub 1, to be the two entities that would remain restrained. As I were to take that, there would be no other entities at the moment that would fall under what your Honor has indicated thus far.

THE COURT: When you say no other entities, you mean no other entities that you recognize as having been listed anywhere as judgment debtor that you understand are policy owners with Penn Mutual?

MR. MANCUSO: That's correct.

THE COURT: And it would also restrain Penn Mutual from complying with a direction to make a transfer out of a trust owned by some other entity to a listed judgment debtor?

MR. MANCUSO: And/or Benistar.

THE COURT: And/or Benistar, one of the adjudicated alter egos.

MR. MANCUSO: Correct.

THE COURT: I'm sure there is a specific Benistar entity name that's in the alter ego adjudication, and you would serve, give copies to Mr. Mancuso of the judicial decisions that were cited in Universitas' papers finding other entities to be alter egos? Correct, Ms. Colbath?

MS. COLBATH: I am happy to furnish him with those

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1 decisions. I think that there are three of them, but we have
2 them in our papers and I'm happy to furnish those.

3 I just want to be clear on footnote 1. At this point,
4 the parties are agreeable that GMT Living Benefit Trust, the
5 Grist Mill Survivor Trust, Benistar 419 Plan and Trust that are
6 listed there would continue to remain subject to the
7 restraining notices, correct?

8 THE COURT: Well, that isn't what I had proposed.

9 MS. COLBATH: OK.

10 THE COURT: So why don't you speak to that.

11 MS. COLBATH: Well, again, your Honor -- and I
12 appreciate there is a need to clarify for Penn Mutual. Again,
13 we have undertaken to do that.

14 The affidavits that were submitted, Ms. Carpenter's
15 affidavit and Ms. Kehoe's affidavit could have very easily,
16 succinctly, in one line, said Daniel Carpenter has no interest
17 in these trusts, the trusts that are set forth there. They
18 never said that. And we have a judgment against Mr. Carpenter,
19 who we know has a corporate shell game going. He's taken the
20 Fifth.

21 He refuses to produce one piece of paper relating to
22 any of these trusts, and that should not be used against
23 Universitas. Universitas gets a benefit from that. I mean, my
24 thinking is, based on the record before you, there's no reason
25 that the trusts set forth in footnote 1, all of them, shouldn't

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1 be restrained.

2 There has been opportunity for Mr. Carpenter to say I
3 don't have any interest in any of that. Ms. Kehoe has access
4 to all of the records, paper and electronic. She's the trustee
5 now. We presented her with an affidavit. She submitted an
6 affidavit. Nowhere does she say Mr. Carpenter doesn't have an
7 interest. So I am entitled to execute on assets that he has an
8 interest in.

9 Again, I would ask, at least until Magistrate Judge
10 Pitman affords us the opportunity to take Mr. Carpenter's
11 deposition, I have acted with all diligent speed once you gave
12 me the judgments last August. We issued the restraining
13 notices, and I understand Penn mutual is looking for guidance.
14 I think they deserve guidance. I'm trying to give them
15 guidance.

16 But I will tell you that whenever Penn Mutual has
17 called to tell me that there is an individual who has an issue
18 with a transfer of a policy Universitas has acted on that and
19 vis-a-vis Penn Mutual I am not aware of any outstanding issue
20 with an insured.

21 When I received Mr. LaBelle's papers they listed, you
22 know, you've got NB and you've got STV and you've got these
23 individuals that they claim have issues.

24 I asked Mr. LaBelle, tell me who they are. I will get
25 on the phone and we'll resolve this. He hasn't furnished the

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1 information to me.

2 But I don't think that there's any reason that we need
3 to act before Universitas has had its opportunity for
4 appropriate discovery. I have dealt on a case-by-case basis
5 with every issue, and I would ask Mr. Mancuso to confirm it for
6 me. We have resolved all outstanding issues.

7 THE COURT: You and Mr. Mancuso have resolved specific
8 issues that have come up about disbursements to third parties?
9 Is that what you mean?

10 MS. COLBATH: Correct.

11 If someone went to Penn Mutual, an insured or a
12 participant or individual, and said, look, I want to transfer
13 my policy and Penn Mutual says, well, hold it, we've got this
14 issue with the restraining notice, he furnishes them my
15 telephone, and I am going to hazard a guess, I think it is
16 under six. It's been like three or four individuals. We have
17 arranged for the transfer. There has been a small payment
18 transfer payment made, a few thousand dollars on these.

19 There's no outstanding individual, to my knowledge,
20 except for whatever is set forth in Mr. LaBelle's, which I
21 learned for the first time when Ms. Kehoe submitted her
22 declaration. We have dealt with every person who wanted relief
23 from the restraining order.

24 THE COURT: Mr. Mancuso?

25 MR. MANCUSO: To my knowledge, your Honor, there were

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1 two. And, to be clear, if anybody contacts Penn Mutual asking
2 Penn Mutual why can't something be processed, they are advised
3 that there is a restraining notice in place, and Penn Mutual's
4 understanding is that it precludes Penn Mutual from doing
5 whatever the specific request is.

6 My understanding is that, in turn, that Penn Mutual --
7 yes the information is provided that indicates who the
8 attorneys are in the case and that they can speak with them
9 about status.

10 I am aware of two of them that have been resolved.
11 There may be more, but I'm aware of two. So in two instances
12 out of -- I don't quite know how many -- I am sure Mr. LaBelle
13 will speak to that -- have come up or have gotten resolved or
14 not resolved, I'm not certain about that. But that's my
15 understanding of it, your Honor.

16 THE COURT: So you are not aware of any active
17 unresolved controversies?

18 MR. MANCUSO: Not personally. I wouldn't suggest to
19 this Court that Penn Mutual is aware of zero, but none have
20 been brought to my attention at this time.

21 THE COURT: Thank you.

22 Ms. Colbath, for clarity, what you are asking me to do
23 with respect to a modification on Penn Mutual today is to
24 restrain not only judgment debtors and adjudicated alter egos,
25 but also, pending the resolution of the discovery issues as to

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1 the Carpenter entities and Mr. Carpenter in particular and
2 supplemental submissions as necessary, any transfers or
3 disbursements regarding all of the entities. I think there's
4 14 listed in the footnote to page 3 of Penn Mutual's papers.

5 MS. COLBATH: Correct. And, your Honor, on the
6 policies, I believe that there may have been a couple of
7 policies that came to my attention from Lincoln Life, who
8 doesn't oppose the extension of the restraining notice, that I
9 included in the six. If there were two from Penn Mutual, that
10 sounds right, but there was another carrier who brought a
11 couple of instances to my attention and they were promptly
12 resolved.

13 So the prejudice to my client would be tremendous if
14 the restraint is lifted without us having the opportunity for
15 the appropriate discovery, which we have sought diligently.

16 The prejudice is very low to the plans at issue
17 because we have been addressing them on a case-by-case basis.

18 Aside from the details that are in Ms. Kehoe's, which
19 I was prepared to act on -- but I can't with initials, I need
20 additional information -- those two can be addressed on a
21 prompt basis.

22 THE COURT: Thank you.

23 Mr. Mancuso?

24 MR. MANCUSO: Your Honor, if I may, my concern with
25 that is just the timing with which it may or may not happen. I

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1 appeared here last year when there was Mr. LaBelle's motion for
2 a protective order pending, and the year has gone by with a
3 restraining notice and we're still sort of in the same
4 position.

5 I appreciate that out of today's hearing I hope there
6 will be an order really one way or the other, and I think
7 that's the most important thing with respect to Penn Mutual,
8 that there is some clarity that Penn Mutual will be ordered to
9 be restrained in connection with. If it's all of these
10 entities, so be it. But if not, know which specific entities
11 we are restrained with respect to, because I think that's the
12 most important piece here that Penn Mutual does have some
13 guidance.

14 That being said, I appreciate where Mr. Colbath's
15 coming from, I really do. I don't know that there is a
16 mechanism to get the information, get an adjudication on that.

17 I just fear that we are going to be back here a year
18 later in the same position. I think part of this is covered
19 by -- I know Mr. LaBelle hasn't had his chance to speak yet.

20 THE COURT: He will.

21 MR. MANCUSO: But part of it I think is, you know, his
22 entities that he's representing are also restrained, at least
23 in some part. I think there is sort of a double layer of
24 protection, notwithstanding the arguments that Ms. Colbath has
25 made, contrary to that. I just think that to enter an order

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1 restraining all these entities, if that's where the Court is
2 going, I would appreciate that, but I do think that we don't
3 need to go that far. I don't think that that's really where we
4 should go.

5 My hope is that we can continue to work within the
6 framework you have announced to start this hearing, with some
7 specific parameters on which of the entities will fall into
8 those categories today, understanding that, of course, an
9 adjudication down the line could expand on that at any time.

10 THE COURT: Before I hear from Mr. LaBelle, what I
11 believe I am hearing Ms. Colbath ask for here is -- well, when
12 we leave today, because I am not going to type it up on the
13 bench will be a continuation of the current TRO until I put the
14 new order in.

15 Then the order that Universitas is asking for today is
16 one that extends until the judgment is paid the restraining
17 notice against Penn Mutual as to the judgment debtors and
18 adjudicated alter egos, as I laid it out in my initial
19 proposal, and then also extends as to the other 14 listed in
20 footnote 1 the restraint in that same construct of titled
21 policies and disbursements as to these other 14, pending
22 further order of the Court, which would be pending the
23 resolution of the outstanding discovery issues as to
24 Mr. Carpenter, and the principals of his affiliates or the
25 representatives of his affiliates.

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1 Is that what you are asking me for, Ms. Colbath?

2 MS. COLBATH: Yes, your Honor. Though on the
3 indefinite for an institution like Penn Mutual, we recognize
4 that this was really very much a very long short wish list. So
5 I don't expect that we are going to get something indefinite.

6 I think something along the lines of 30 or 45 days
7 after the completion of Mr. Carpenter's deposition or an order,
8 you know, compelling it by a date certain, something where it's
9 tied to his deposition in some reasonable time to come back to
10 the Court with whatever information we garner from that is what
11 is fair.

12 THE COURT: This is as to the other 14 entities or as
13 to everything?

14 MS. COLBATH: Those restraining notices where no one
15 objected, those could be extended until the judgments are
16 satisfied in full. I thought the focus here was on the Penn
17 Mutual.

18 THE COURT: What are you asking me for as to Penn
19 Mutual, because we haven't talked about duration?

20 MS. COLBATH: Penn Mutual, I would say 45 days; that
21 the restraining notices remain in full force and effect until
22 45 days after the conclusion of Mr. Carpenter's deposition or
23 denial.

24 THE COURT: As to judgment debtors as well as the
25 other 14?

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1 MS. COLBATH: As to all 14.

2 THE COURT: Well, the list of 14 in the footnote
3 doesn't include the named judgment debtors as I understand it.

4 MS. COLBATH: Correct. So it would be, your Honor,
5 your recitation that said -- let me just find my notes. You
6 had listed the judgment debtors, Benistar, any alter ego, and
7 we would just be adding those entities listed in footnote 1 on
8 page 3 of Penn Mutual's memorandum on the motion.

9 THE COURT: What I'm asking you is that are you asking
10 or willing to agree to -- however you want to put it -- a limit
11 on the duration of the restraining notice as to the judgment
12 debtors, Benistar, and the alter egos to that 45 days after the
13 conclusion of Carpenter's deposition time frame, or are you
14 asking for a different durational provision as to the judgment
15 debtors Benistar?

16 MS. COLBATH: I now appreciate your Honor's question.

17 As to those entities listed in footnote 1, I think
18 that that has to be a shorter period of time. That would be a
19 45-day period after the completion of Mr. Carpenter's
20 deposition. As to the others --

21 THE COURT: You would file an affidavit upon the
22 completion of --

23 MS. COLBATH: Correct. It would automatically expire
24 if I don't do anything, and to get it extended I have to come
25 into court with a showing.

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1 THE COURT: Well, none of us is going to know when
2 Carpenter's deposition is concluded unless you file something.
3 It can't be automatic because I am not going to know,
4 Mr. Mancuso isn't going to know. We will need some mechanism.

5 MS. COLBATH: OK. We'll accept some notice I have to
6 file with the Court upon completion. However, the Court would
7 like to set a definitive date on that. I'm obviously --

8 THE COURT: We will create a mechanism.

9 MS. COLBATH: Correct. As to the others, I think that
10 what is typically done I see in cases is that they are extended
11 for another year. So I would ask that they remain in force for
12 an additional year.

13 THE COURT: All right.

14 MS. COLBATH: Thank you.

15 THE COURT: Thank you.

16 Mr. Mancuso?

17 MR. LABELLE: May I make one clarification.

18 The footnote, your Honor, just so it's clear, there's
19 14, but there's two in the bottom of the text as well. So
20 there's really a total of 16 entities. Just so we are all
21 talking about the same thing.

22 THE COURT: All right. So let's be clear.

23 So in the first paragraph, the carryover paragraph,
24 there's Grist Mill Trust dated 10/1/03.

25 MR. MANCUSO: Correct.

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1 THE COURT: That's one of the additional ones. And
2 the Sickness Accident and Disability Indemnity Trust 2005
3 listed up in the text, and then the 14 in the footnote?

4 MR. MANCUSO: Correct.

5 THE COURT: Ms. Colbath, that's the universe that you
6 are asking be added to judgment debtors?

7 MS. COLBATH: Correct.

8 MR. MANCUSO: Your Honor, I would ask, to the extent
9 that we're deviating from where you initially stated, that if
10 there's going to be a deposition of Mr. Carpenter that it be
11 set within a specific time frame.

12 I do fear by the time we get to that point, if it's 45
13 days thereafter, that deposition takes place in ten months,
14 that is essentially a year that -- you know, we basically have
15 gotten nowhere then in 12 months.

16 I think to the extent that that has to happen, I
17 object to that. But if it has to happen, I think we have to
18 try to set it for a certain date so we can move this forward.
19 Again, otherwise my fear is that we are going to be back before
20 you in another year having the same conversation.

21 THE COURT: It seems that the issues relating to
22 Mr. Carpenter's deposition taking place are twofold. One is my
23 colleague making a determination as to whether he will order
24 the deposition, and the other is Mr. Carpenter complying with
25 the order to take the deposition.

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1 Ms. Colbath doesn't have control over either of those,
2 and frankly I don't either because my colleague is taking care
3 of the application.

4 I think, yes, there is a possibility that, if the
5 order is granted but Mr. Carpenter is not compliant that this
6 second group could end up extending out for another year, which
7 would give you a defined universe of entities, but the
8 practical issue of having to negotiate carveouts to the extent
9 that disbursements are disputed.

10 What I'm thinking of as a mechanism is to require
11 every 30 days for Universitas to file and copy to Penn Mutual a
12 statement as to the status of the application for Carpenter's
13 deposition and the conduct of any depositions. So that if the
14 deposition is actually taken and concluded, then certainly
15 within 30 days of that date and no more than 45 days of that
16 date we have the -- and I guess I would have you put in a
17 notice upon the conclusion of the deposition if it doesn't
18 coincide with the 30-day reporting period so that there would
19 be some objective indicator if it's going to expire earlier.

20 So let me hear from Mr. LaBelle.

21 MR. LABELLE: Thank you, your Honor.

22 I have to respond to some of the things that
23 Ms. Colbath said.

24 First of all, these declarations that she's talking
25 about, what they did was they drafted five declarations, one

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1 for Mr. Percy, one for Mr. Carpenter, one for Ms. Carpenter,
2 one for Ms. Kehoe, and one for an individual named Matthew
3 Westcott. They were 35 or 40 pages long and had all kinds of
4 stuff in them.

5 At the same time they said, We want to depose anybody
6 anyway.

7 So I said, OK, tell me what you want. You can take a
8 deposition.

9 We have talked about taking the depositions. I don't
10 represent Mr. Carpenter. Mr. Percy is deceased. As recently
11 as last week, I spoke with Ms. Colbath about the scheduling of
12 Mrs. Carpenter's deposition.

13 The representation that Mrs. Carpenter has been
14 dodging her deposition is simply incorrect. It is not
15 accurate. She's willing to testify. They subpoenaed her here.
16 She's willing to testify today if your Honor needs it. I don't
17 think you do.

18 She mentioned this umbrella, Grist Mill Trust umbrella
19 document. That document is a marketing document. Some of
20 these trusts were being marketed at the same time, back in the
21 early 2000s. The Grist Mill Trust was a large trust and had
22 become known in the world of brokers, and there was a marketed
23 being document that referred to under the Grist Mill Trust
24 umbrella. OK. That is all that is.

25 Earlier this year -- and Ms. Colbath neglected to tell

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1 you this -- we furnished over a thousand pages of documents to
2 Loeb & Loeb giving them copies of all the individual trust
3 documents on each of these trusts.

4 We gave them documentation from the IRS indicating
5 that each of them has separate employer identification numbers.
6 We gave them information on all of the bank accounts maintained
7 by these trusts, both in the past and presently, indicating
8 that they all maintained separate bank accounts.

9 To the point that there's been no declaration filed
10 there has been a declaration filed by Kathy Kehoe as part of
11 this motion. She explains the setup of these trusts, including
12 the interested parties that are objecting. They all exist
13 separately.

14 I can't believe that what she is looking for is some
15 declaration from somebody that Mr. Carpenter does not have an
16 interest in these trusts.

17 I have called Ms. Kehoe today to testify to that.
18 There is absolutely no -- you know, there just isn't any
19 question about that.

20 Your Honor made a finding with respect to Grist Mill
21 Trust because of financial transactions that occurred, and I
22 understand that finding.

23 To my knowledge, and I can't represent that I have
24 looked at all the trusts, I am not intimately familiar with all
25 of the trusts. But Universitas counsel subpoenaed all of

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1 Mr. Carpenter's bank records, and the reason that your Honor
2 was able to have evidence presented with respect to the Grist
3 Mill Trust is because they traced all the money and they saw
4 those transactions. There weren't any other transactions that
5 they brought to light. If they had claims against these other
6 trusts, they should have brought them.

7 The idea that they need more discovery, well, maybe
8 they need a little more discovery because they have some new
9 ideas, but it's not like they haven't had a tremendous amount
10 of discovery. They have literally subpoenaed every bank
11 account where Mr. Carpenter had signature authority, and the
12 only evidence they found was as to Grist Mill Trust. The
13 evidence was there, and your Honor made findings with respect
14 to Grist Mill Trust.

15 In the other litigation that has been involved where
16 entities have been found to be alter egos -- and that is the
17 matter that I was conferring with the client representatives
18 about -- no other trusts has ever been found to be an alter ego
19 of Mr. Carpenter other than the Grist Mill Trust. The reasons
20 for that were because of the financial transactions that your
21 Honor found that went back and forth. The alter ego findings
22 have been with respect to LLCs and corporations.

23 So, if you want to use as an example, the Grist Mill
24 Living Benefit Trust, the issue currently pending there is that
25 provides medical reimbursement benefits. Each of those

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1 trusts -- again, I don't know every one of these trusts, but
2 the ones that I have seen that I have become familiar with
3 because of the litigation, they are all set up differently, and
4 they provide different benefits.

5 They share common characteristics in that typically
6 employers make contributions to the trusts in order to derive
7 benefits for employees of those employers. They share that
8 common characteristic, and they do have common trustees. But
9 they are all set up differently. There's different
10 participants, there's different bank accounts, there's
11 different taxpayer ID numbers, and they operate separately.

12 If they are able to prove otherwise, then prove
13 otherwise and then obtain a judgment. That is what they did
14 with Grist Mill Trust, and they got a judgment.

15 It's simply unfair, and it's impacting people who are
16 innocent. I will use this example. There is a fellow in the
17 Grist Mill Living Benefit Trust who has brain cancer, and he's
18 incurred a lot of medical expenses. He can't get reimbursement
19 because Penn Mutual is being overly conservative in my view in
20 the way they are interpreting the restraining notice.

21 The restraining notice ought to operate against
22 judgment debtors. It ought not to operate against entities
23 that are not judgment debtors. It's incumbent upon Universitas
24 to prove that they have a claim against these entities before
25 they start restraining them and impairing the rights of people

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1 who have nothing to do with Universitas.

2 THE COURT: Has --

3 MR. LABELLE: May I say one other thing, your Honor?

4 THE COURT: Yes.

5 MR. LABELLE: The two transactions that Mr. Mancuso
6 mentioned, those involve SADI Trust. The SADI Trust is not a
7 judgment debtor. There were two individuals who wanted to
8 terminate out of the SADI Trust and have their life insurance
9 policies transferred to them. So it was going to be an
10 ownership change in the SADI Trust out to the individuals. I
11 don't know the details, but I have reason to believe that the
12 only reason those two were approved was because Universitas
13 insisted that they be paid, even though they had no judgment
14 against SADI, and they had no right to impede those people's
15 insurance, life insurance rights.

16 And we are not talking about a couple of thousand
17 dollars, your Honor. I have reason to believe it was in the
18 range of \$50,000. I have reason to believe that because the
19 broker contacted me.

20 Your Honor is also familiar with the Fisher death
21 claim that's pending. The broker there told me that
22 Ms. Colbath's office has contacted him, even though, again,
23 that is a SADI policy. There is one Grist Mill Trust policy,
24 and I agree that Grist Mill Trust is restrained. But as to the
25 SADI policy, the conversation has been, well, pay us money and

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1 we'll let your death benefit go through.

2 That's what's going on with these restraining notices,
3 your Honor, and it's not right. I have given them
4 documentation which its face shows that these trusts are
5 separate.

6 They had an opportunity to prove transactions that
7 might have been involved with Mr. Carpenter, and they proved
8 them as to Grist Mill Trust and Grist Trust Mill only.

9 I apologize. I'm getting animated about this. I
10 believe we are in area where this getting abusive. It is an
11 abuse of process when you serve a restraining notice and you
12 refuse to say to insurers like Penn Mutual, I agree it only
13 applies to the judgment debtors. That's the only thing it can
14 apply to, your Honor, under the CPLR. It restrains the assets
15 of judgment debtors. It doesn't restrain the assets of people
16 who you think you might have a claim against down the road,
17 particularly when it is impacting individuals like people who
18 have brain cancer who also have a death in their family. It is
19 just not right.

20 If they have a claim get, let them pursue it and make
21 it. They had the opportunity, and the only claim they made was
22 against Grist Mill Trust. Your Honor found that for reasons
23 that are in the record and understood.

24 I apologize for being animated about this, your Honor,
25 but it is wrong. They say why don't we give them the names of

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1 other people. Why? So they can shake down more money out of
2 other people that are innocent? It's not right.

3 THE COURT: Before you stand, Ms. Colbath,
4 Mr. LaBelle, does your interest group object to the judgment
5 debtor oriented modification of the Penn Mutual restraining
6 notice that I outlined?

7 MR. LABELLE: I'm sorry. Was that directed to me?

8 I agree in principle with your initial reaction, your
9 Honor, not with the extensions to these other trusts that have
10 been discussed. Your Honor's initial reaction was correct in
11 my humble opinion. I apologize again for being than animated.

12 THE COURT: Thank you, Mr. LaBelle.

13 Ms. Colbath?

14 MS. COLBATH: Mr. LaBelle talked about bank statements
15 and thousands of pages of documents that these trusts have
16 produced. He must have produced those documents honestly to
17 someone else.

18 I've never seen bank statements, loan transactions,
19 Mr. Carpenter's involvement at all with any of these. He did
20 produce pieces of paper that show this they applied for tax ID
21 numbers. But that is not what is at issue here. The
22 restraining notice is issued against a judgment debtor's
23 interest, contingent, direct, indirect, in property.

24 Again, Ms. Kehoe could have said that none of the
25 judgment debtors have any interest in this trust, and they

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1 didn't do that. He did produce a disk about a week ago when we
2 were preparing for the hearing which I haven't looked at. But
3 I believe it had about 75 pages on it. We did subpoena bank
4 statements. That didn't come from Mr. LaBelle and his clients.
5 We went to TD Bank. We fought. We finally got documents.
6 Then, when TD bank closed the accounts, we don't know where the
7 \$30 million is.

8 Mr. LaBelle's clients haven't paid one penny
9 voluntarily on these \$30 million judgments. So he can get
10 animated and get upset, but it's my client that is owed the \$30
11 million, and they have refused and continue to refuse to reveal
12 where it is, where they have parked it, what they have invested
13 it in.

14 So, yes, we have to use the mechanism that the CPLR
15 allows us, and that is these restraining notices.

16 If he would furnish me with the name of the individual
17 with brain cancer, we will look into that, and they can show me
18 their enrollment documents and we will act on that right away.

19 Again, we have asked him for it. They don't want to
20 reveal the name, but every month they do send to us a short
21 affidavit telling us that they have paid the premium on John
22 Smith with the policy number.

23 In one breath here he will give me every detail on a
24 transaction, but when it comes to something serious that he is
25 hyping up, this brain cancer person, he won't tell me the

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1 policy, he won't tell me the insured's name. If he wants to
2 resolve this, we could do it and get it down now or outside the
3 court when we finish here today.

4 I remain ready, willing, and able on any emergent case
5 like this to do the reasonable thing. They want a total
6 lifting so that they can begin to transfer assets, and that's
7 what we object to.

8 Thank you.

9 One other thing, your Honor. As to the SADI Trust,
10 there is currently pending before Judge Nathan -- he says that
11 we're shaking down SADI. No. SADI money was paid into the
12 court in an interpleader action for Grist Mill and SADI.
13 That's combined litigation, two life insurance companies,
14 currently pending before Judge Nathan.

15 We have asserted a cross-claim for an alter ego
16 finding against SADI. That is currently being litigated. We
17 are in the middle of discovery. She recently issued a
18 scheduling order. We are waiting in that case for Mr. LaBelle
19 to comply with discovery. He hasn't served any. We have, and
20 we are waiting for his responses.

21 THE COURT: Thank you.

22 I will take these modification requests under
23 advisement. By the end of this week I will issue a modified
24 order.

25 Mr. LaBelle?

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1 MR. LABELLE: Yes, your Honor.

2 There is one other with respect to your Honor's
3 initial proposal.

4 You referred to Benistar. I am not sure what you mean
5 by Benistar. Benistar is a name that is used by a lot of these
6 companies. There is a Benistar 419 Plan and Trust.

7 THE COURT: Benistar was meant to be shorthand for the
8 Benistar entity or entities against which there have been alter
9 ego adjudications, and this is referenced in the supplemental
10 memorandum of --

11 MR. LABELLE: That is clear. I can live with that,
12 your Honor.

13 Again, my understanding -- incidentally, Ms. Colbath
14 always associates me with Mr. Carpenter. I don't represent
15 Mr. Carpenter, nor do I represent those other companies. I'm
16 here on behalf of the Grist Mill Trust and the trusts, and so I
17 don't represent those other entities or Mr. Carpenter.

18 My understanding is none of the trusts other than
19 Grist Mill Trust have been found to be alter egos in any of
20 those litigations, and I am familiar with those.

21 THE COURT: But you are familiar also with the
22 adjudications relating to, as you put it, LLCs and
23 corporations?

24 MR. LABELLE: The Cahaly litigation and the Iantosca
25 litigation that is referenced in Universitas' papers.

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1 THE COURT: I just found the document now.

2 This is the supplemental memorandum of Universitas. I
3 don't have the docket entry number on this printed. It's dated
4 September 24, 2015, and at the bottom of page 1 it says that in
5 *Cahaly v. Benistar Property Exchange Trust Company, Inc.*, that
6 Benistar Administrative Services Inc., Benistar Ltd., Benistar
7 Employer Services Trust Corporation, judgment debtor Carpenter
8 Financial Group, LLC, U.S. Property Exchange, and Benistar
9 Property Exchange Trust Company Incorporated were held to be
10 Carpenter alter egos. And then it also refers to a verdict in
11 a case called an *Iantosca v. Benistar Administrative Services*.
12 The representation is that Step Plan Services Inc. and Benistar
13 419 Plan Services Inc. are Carpenter alter egos.

14 Then there's also a reference to a recitation in the
15 First Circuit opinion in *Iantosca* indicating that the state
16 court had found that five additional corporate entities had the
17 veil pierced, and that lists Benistar Administrative Services,
18 Benistar Employers Services Trust Corp., Benistar Ltd.,
19 Carpenter Financial Group LLC and U.S. Property Exchange.

20 So that was what the Benistar shorthand was meant to
21 be. I think the way I will phrase it is entities found to have
22 been alter egos.

23 MR. LABELLE: I can live with that, your Honor. Those
24 are all accurate, by the way. But those don't involve any of
25 these trusts.

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1 THE COURT: Thank you.

2 Now may we go on to Curaleaf?

3 MS. COLBATH: Sure.

4 THE COURT: As to Curaleaf, my understanding is that
5 Curaleaf is the tenant of and has an option to purchase
6 property from Grist Mill Partners LLC, which is not itself a
7 judgment debtor, but as to which the district court in
8 Connecticut has issued a charging order.

9 My understanding of the function of the charging order
10 or the effect of the charging order is that it requires that
11 any disbursements that would have been made by the LLC to
12 Mr. Carpenter instead be made to Universitas, and that no loans
13 could be made to Mr. Carpenter, but that it doesn't constitute
14 a transfer of the equity interest in that LLC to Universitas
15 and doesn't give Universitas the status of a member of that
16 LLC.

17 Am I correct so far, Ms. Colbath?

18 MS. COLBATH: You are very good, yes.

19 It also required production of some documents which
20 haven't been made. But you have summarized the substantive
21 order. Thank you.

22 THE COURT: Thank you. I have been trying. There's a
23 lot to study in this case. So it seems to me that the Curaleaf
24 debt is to a nonjudgment debtor and an entity that hasn't been
25 found to be an alter ego.

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1 So, since the Curaleaf receivable is not a debt to a
2 judgment debtor or alter ego, it seems to me inappropriate to
3 continue the restraining order because of the lack of that
4 relationship. So my inclination is to vacate the Curaleaf
5 restraining order.

6 So, Ms. Colbath, if you wanted to be heard.

7 MS. COLBATH: Sure, your Honor. The argument is
8 essentially the same as with Penn Mutual. That is, we have
9 not -- I believe that Dan Carpenter has an interest in Grist
10 Mill Partners. This is just another one of his show companies
11 that he formed.

12 They have never produced any -- I sought financial
13 records. This order required them to give me certain things
14 last week which haven't been produced. That is a list of other
15 LLCs that Carpenter Financial Group has an interest in. But it
16 also requires next week --

17 THE COURT: Slow down just a little bit.

18 MS. COLBATH: Yes. It also requires them to give me
19 copies of profit and loss statements, tax returns, balance
20 sheets, bank statements. So at this point, based on the
21 declaration that Ms. Carpenter submitted on the application,
22 she doesn't say that her husband doesn't have an interest in
23 Grist Mill Partners. And I have a judgment against
24 Mr. Carpenter. And it only operates, he has testified --

25 THE COURT: Even if he is has an interest in that

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1 LLC --

2 MS. COLBATH: Correct.

3 THE COURT: -- that might mean that you can go and, if
4 Connecticut law permits this, execute on his interest in the
5 LLC and get the transfer of that membership interest. But that
6 in and of itself would not, unless you dissolve that LLC, make
7 the assets of the LLC his assets or make that LLC his alter
8 ego.

9 MS. COLBATH: If Mr. Carpenter, as we believe is the
10 case, has an interest in Grist Mill Partners LLC, OK -- I mean,
11 Mr. Carpenter himself testified that he never puts any assets
12 into his own name. He uses these LLCs in order to shield
13 creditors like Universitas. He's acknowledged that under oath.

14 Based on all the facts as we currently understand
15 them, we believe Mr. Carpenter has an interest in Grist Mill
16 Partners LLC. That's the entity that Curaleaf is engaged in
17 the transaction with.

18 I sought to have Mr. Carpenter, I asked him please
19 produce to me documents relating to your relationship with
20 Grist Mill Partners LLC, and he said, I am taking the Fifth
21 Amendment. I am not producing anything. I am not going to
22 incriminate myself.

23 Based on that, a reasonable inference is that he has
24 an interest that he's concealing in Grist Mill Partners LLC.
25 If that is the case, and Curaleaf owes money to Grist Mill

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1 Partners, I am entitled to issue a restraining notice to
2 Curaleaf.

3 They are within my Rule 45 100 miles. Magistrate
4 Judge Pitman has already ruled on this issue on the
5 effectiveness of a restraining order on a party in Connecticut.
6 He ruled on it in this case with regard to Mr. LaBelle's firm
7 and found that we were authorized so long as the party was
8 within the 100 miles.

9 So, at this point, you are entitled to -- and until we
10 take Mr. Carpenter's deposition and get the discovery, we are
11 entitled to that we've sought relating to Grist Mill Partners,
12 we are entitled to issue a restraining notice to Curaleaf to
13 say, Hold it. If you owe money on Grist Mill Partners, you
14 can't transfer that without us knowing and giving us an
15 opportunity to make a turnover motion that that money be
16 transferred to us.

17 That's all the restraining notice does. It doesn't
18 direct them that they have to pay it to me. They just can't
19 pay it to Mr. Carpenter, and it gives me an opportunity --
20 frankly, these restraining notices are the only way we've ever
21 learned about any assets and transactions. The judgment
22 debtors have never disclosed anything. They have never made
23 any effort to satisfy any of these judgments.

24 So when Curaleaf decides it's going to make a payment,
25 I can go into court and make a turnover motion and say that

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1 belongs to Universitas, because this is another entity that
2 Mr. Carpenter has an interest in. And I am entitled to collect
3 on the judgment we have against him with anything that he has
4 an interest in.

5 I do think that the restraining notice is -- their
6 argument, Mr. LaBelle's argument that it is not effective in
7 Connecticut has been addressed by Magistrate Judge Pitman, and
8 we have a reasonable basis to believe that Mr. Carpenter has an
9 interest in Grist Mill Partners and it should be extended along
10 the same lines, the same timetable as we have discussed with
11 Penn Mutual to afford Universitas the discovery that it is
12 entitled to.

13 Thank you.

14 THE COURT: Thank you.

15 Mr. Clasen.

16 MR. CLASEN: Yes, your Honor, I appreciate it.

17 We would like some clarity if we possibly could get
18 it.

19 First of all, we were served with a restraining order
20 restraining Curaleaf from paying Grist Mill Partners LLC. We
21 took some discovery. According to the discovery we got, it was
22 that 99 percent of Grist Mill Partners LLC is owned by one of
23 the judgment debtors, Carpenter Financial Group.

24 So in accordance with the restraining order we were
25 served upon, we complied. We have not paid Grist Mill Partners

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1 LLC anything.

2 In response Grist Mill Partners LLC has commenced an
3 eviction proceeding, claiming that the tenancy has been
4 terminated because we haven't paid them anything.

5 So if your Honor decides to continue the restraining
6 order or not to continue the restraining order, what we would
7 appreciate is at least some sort of statement that the
8 restraining order, if you decide to terminate it, is permanent
9 as of today, but we were right in complying with it.

10 If we were paying Grist Mill Partners, we would have
11 to pay her client. We did what we should have done. We
12 complied with the order. You have extended it twice, your
13 Honor. We have complied the order.

14 We have we are in a catch-22, your Honor, because by
15 complying with the order we have a eviction proceeding against
16 us up in Connecticut. We have other defenses in that eviction
17 proceeding. For example, the roof of the building has not been
18 repaired.

19 What we are looking for is just clarity if you are
20 going to continue it with a clear order that we are currently
21 restrained. If you are not going to continue it, say the
22 restraint is lifted as of today, but prior to this we were
23 correct in complying with the restraining order they served as
24 well as the two orders you issued continuing the restraining
25 order.

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1 So we appreciate it, your Honor.

2 THE COURT: Mr. LaBelle, did you wish to be heard?

3 MR. LABELLE: Yes, your Honor.

4 Again, I think your Honor's initial instincts were
5 correct, that Grist Mill Partners is not a judgment debtor.
6 The obligation that Curaleaf owes, the rent obligation is owed
7 to Grist Mill partners. It's really as simple as that. So the
8 restraining notice shouldn't have any effect on Curaleaf's
9 obligation relating to Grist Mill Partners.

10 Your Honor, in point of fact, Mr. Clasen, they stopped
11 paying rent before the restraining notice was served.

12 What's happened now is they are using the restraining
13 notice as an excuse to continue to not pay rent. That is just
14 the kind of mischief with the refusal of Universitas to clarify
15 the real import of the restraining notices.

16 But I think your Honor's initial assessment was
17 exactly right. The whole setup of the LLC is the membership
18 interest is separate from the LLC interest, and the obligation
19 of Curaleaf is to the LLC. It is not to Carpenter Financial.

20 The LLC is restrained. It cannot pay any money to the
21 member debtor, which is Carpenter Financial Group. There won't
22 be any distribution out.

23 If there is, it is a violation of the restraining
24 notice. Actually, I shouldn't say that, because that is not --
25 that was an incorrect statement. As long as the restraining

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1 notice was in place, Grist Mill Partners couldn't pay anything
2 out. It is a third party, so it would expire after the
3 one-year period.

4 THE COURT: Unless I extend it. Is the Grist Mill
5 Partners restraining notice one of the listed restraining
6 notices as to which no timely objection was interposed?

7 MS. COLBATH: Yes.

8 THE COURT: I am hearing yes.

9 MR. LABELLE: I mean, Grist Mill Partners doesn't
10 really have an objection to not paying Carpenter Financial, so
11 I don't really care. What we do have an objection to is the
12 notion that the -- that was stated. That was Grist Mill
13 Partners' objection. The notion that the restraining notice
14 somehow prevents Curaleaf from paying Grist Mill Partners. It
15 is a sole tenant in the building, your Honor, and the tenant is
16 refusing to pay based on this restraining notice in part.

17 THE COURT: Thank you.

18 MR. CLASEN: Your Honor, if I could just clarify
19 something?

20 THE COURT: Yes.

21 MR. CLASEN: Curaleaf stopped paying rent in January
22 because the roof was leaking and the landlord didn't come in
23 and fix it. We were served with the restraining order in
24 February, and we then told them there was another reason why we
25 can no longer pay them right now, and we have been restrained

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1 since February from paying them the rent.

2 To make some argument that this is an excuse for
3 something is totally incorrect. We told them we were faced
4 with the restraining order that was issued that you twice
5 extended, your Honor.

6 I don't think there is any doubt that we have been
7 complying with the restraining order. I would just appreciate
8 it, because in Connecticut they are taking the position that we
9 are not restrained. And our tenancy has been terminated
10 because we have been complying with the order. That is why we
11 have been put in this catch-22 position.

12 THE COURT: Thank you.

13 I do need briefly to take all of this under
14 advisement, and I am undertaking by the end of the week to
15 issue modified orders or an order explaining my determination.

16 Ms Colbath.

17 MS. COLBATH: Yes, your Honor. Could we file on ECF
18 today the supplemental papers which we furnished to counsel
19 earlier today?

20 THE COURT: Yes.

21 Do you have a courtesy copy for me?

22 MS. COLBATH: Yes. Also, would your Honor entertain a
23 two-page memorandum relating to adverse inferences with regard
24 to this application?

25 THE COURT: If it is filed by the end of the day

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1 tomorrow on ECF. Even though it is a court holiday, ECF is
2 open.

3 MS. COLBATH: Thank you.

4 THE COURT: All right. Thank you, all.

5 MS. COLBATH: Thank you, your Honor.

6 THE COURT: We are adjourned.

7 (Adjourned)

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